

ORDINANCE 2192

AN INTERIM ORDINANCE OF THE TOWN OF LOS GATOS EXTENDING THE INTERIM ORDINANCE IMPOSING A MORATORIUM ON THE APPROVAL, COMMENCEMENT, ESTABLISHMENT, OR OPERATION OF MEDICAL MARIJUANA DISPENSARIES

**THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DOES ORDAIN AS
FOLLOWS:**

SECTION I

RECITALS

1. The possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is generally unlawful under California law. [Health and Safety Code Sections 11357-11360]
2. In November of 1996 the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 *et seq.* and entitled the "Compassionate Use Act of 1996"), which allows a person to use marijuana for medical purposes with a doctor's recommendation, without violating state criminal law regarding the use, possession, or cultivation of marijuana. In 2003, the State Legislature adopted Senate Bill 420 (codified as Health and Safety Code Section 11362.7 *et seq.* and entitled the "Medical Marijuana Program Act"), which clarified the scope of the Compassionate Use Act and allowed cities and other governing bodies to adopt and enforce rules and regulations related to medical marijuana.
3. Federal law (codified as 21 USC Section 801 *et seq.* and entitled the "Controlled Substances Act") makes it unlawful to manufacture, distribute, or possess any controlled substances, including marijuana. This creates a significant law enforcement dilemma, in that federal law conflicts with California law.
4. The Town Community Development Department staff has received numerous inquiries from prospective medical marijuana dispensary operators, and at least one of these individuals attempted to obtain a business license from the Town Finance Department to operate a medical marijuana dispensary whether or not the Town permits such use. The Los Gatos Town Code does not specifically address the regulation or location of medical marijuana dispensaries or list medical marijuana dispensaries as a permitted or conditionally permitted use in any zoning district.
5. Throughout the State in cities that have permitted the establishment of medical marijuana dispensaries, issues and concerns have arisen related to the establishment of medical marijuana dispensaries in close proximity to residential properties, schools, and daycare facilities. Furthermore, those cities have reported adverse impacts on public health, safety, and welfare, including an increase in crimes such as loitering, illegal drug activity,

burglaries, robberies and other criminal activity within and around dispensaries, as well as increased pedestrian and vehicular traffic, noise and parking violations. The operation of medical marijuana dispensaries have also caused increased demands for police response, as well as additional maintenance of public streets and sidewalks.

6. There are a number of unresolved questions under state law regarding the regulation of medical marijuana dispensaries and if medical marijuana dispensaries are allowed to be established in the Town of Los Gatos without appropriate regulation, such uses might: (1) conflict with the requirements of the General Plan, the Town's zoning ordinance, forthcoming Town regulations and California and/or federal law; (2) be inconsistent with surrounding uses; and (3) present a current and immediate threat to the public health, safety, or welfare.
7. The Town Council desired on an urgency basis to temporarily prohibit medical marijuana dispensaries in the Town in order to allow the Town the time necessary to study issues surrounding such establishments. During the moratorium period, staff will examine various ways to address these establishments and provide the Town Council with options and recommendations on whether to adopt a regulatory ordinance permitting the operation of such establishments, or, in the alternative, adopt a ban on dispensaries.
8. On October 5, 2009, the Town Council adopted by a unanimous vote an interim ordinance imposing as an urgency measure a moratorium on the approval, commencement, establishment or operation of medical marijuana dispensaries and on November 2, 2009, the Town Council adopted by a unanimous vote an interim ordinance extending the interim ordinance for 10 months and 15-days imposing a moratorium on the approval, commencement, establishment or operation of medical marijuana dispensaries, which is set to expire on October 5, 2010, unless extended by the Council for an additional period of up to one year.
9. During the first 11 months of the study period, staff has collected information, participated in educational seminars, and surveyed the experiences and actions of other cities and counties relative to marijuana regulation. Staff has learned that there has been some success with the regulation of dispensaries, but that there remains serious public safety issues, including adequate security of patrons and substances, as well as the allowable proximity of these uses next to children's venues to be resolved before a final report and range of options can be presented to the Town Council.
10. Staff has prepared a public report outlining some of the work it has engaged in since the moratorium began to move this matter forward for consideration by the Town Council.
11. If the Town of Los Gatos does not extend the interim ordinance for an additional period of up to one year, then the potential exists for the approval, commencement, establishment or operation of medical marijuana dispensaries within the Town, with the accompanying adverse impacts identified herein, without adequate regulations in place. Therefore, there is a current and immediate threat to the public health, safety, or welfare,

and the approval of a use permit, variance, building permit, business license, or any other permit or entitlement for use of property within the Town as a medical marijuana dispensary would result in that threat to the public health, safety, or welfare.

12. Although Town staff has diligently worked on this issue, other pressing issues of greater importance and concern to the Town and the region have competed for limited Town resources; including, but not limited to, public safety, environmental quality, housing in general, and affordable housing.
13. In order to protect the public health, safety, or welfare, it is necessary for the Town Council to extend the interim ordinance on an urgency basis to temporarily prohibit any uses and/or activities as hereinafter provided, which may be in conflict with the possible regulations to be studied. The extension of the interim ordinance is adopted in accordance with the requirements of Government Code Section 65858.

SECTION II

PURPOSE AND FINDINGS

- A. The above recitals are incorporated herein and are each relied upon independently by the Town Council for its adoption of this urgency interim ordinance.
- B. The Town of Los Gatos General Plan does not presently contain a goal or policy or textual discussion of the issue of a prospective use of medical marijuana dispensaries.
- C. The Los Gatos Town Code does not address or regulate the existence or location of medical marijuana dispensaries, operator licensing, or cultivation of marijuana plants.
- D. The Town Community Development Department staff has received numerous inquiries from prospective medical marijuana dispensary operators as to whether a medical marijuana dispensary is currently permitted or conditionally permitted in any of the Town's zoning districts. At least one of these individuals attempted to obtain a business license from the Town Finance Department to open a medical marijuana dispensary in the Town of Los Gatos, whether or not the Town permits such use.
- E. In cities that have permitted medical marijuana dispensaries, issues and concerns have arisen related to the establishment of medical marijuana dispensaries in close proximity to residential properties, schools, and daycare facilities. Cities have reported increases in loitering, illegal drug activity, burglaries, robberies, and other criminal activity within and around the dispensaries, as well as increased pedestrian and vehicular traffic, noise and parking violations. Medical marijuana dispensaries have also caused increased demands for police response, and required additional maintenance of public streets and sidewalks.
- F. The manufacture, distribution or possession of marijuana for any purpose remains illegal under federal law. Furthermore, the cultivation or distribution of medical marijuana for profit is illegal under California law.

- G. There are several unresolved questions of law regarding the regulation of medical marijuana dispensaries, including how to interpret the California Attorney General's August 2008 "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" [marijuana dispensaries generally considered to be unprotected, illegal drug-trafficking enterprises unless they fall within the narrow legal definition of a "cooperative" under California law] and the California Supreme Court case *People v. Mentch* (2008) 45 Cal.4th 274 [who may qualify as a "primary caregiver" for the purpose of cultivating or dispensing medical marijuana to qualified patients]. In addition, a recent California Court of Appeal decision in a case entitled *City of Claremont v. Krause*, 177 Cal.App.4th 1153, (2009), holds that the Compassionate Use Act does not supersede local zoning authority, so that an unpermitted medical marijuana dispensary can constitute a nuisance per se.
- H. To protect residents and businesses from potential harmful community impacts resulting from medical marijuana dispensaries, the Town staff requires sufficient time to study the legality, potential adverse community impacts, and mechanisms for regulating medical marijuana dispensaries, in order to provide the Town Council with options and recommendations on whether to adopt a regulatory ordinance permitting the operation of such establishments, or whether to adopt a ban on dispensaries.
- I. If medical marijuana dispensaries are allowed to proceed without appropriate review and regulation, such dispensaries could conflict with the requirements of the General Plan, the zoning ordinance, and forthcoming Town regulations and California and/or federal law, and result in irreversible incompatibility of land uses and adverse impacts on residents, businesses, neighborhoods, and children of the community. Therefore, there is a current and immediate threat to the public health, safety, or welfare, and the approval of a use permit, variance, building permit, business license, or any other permit or entitlement for use of property within the Town as a medical marijuana dispensary would result in that threat to the public health, safety, or welfare.
- J. On October 5, 2009, the Town Council adopted by a unanimous vote an interim ordinance imposing as an urgency measure a moratorium on the approval, commencement, establishment or operation of medical marijuana dispensaries.
- K. On November 2, 2009, the Town Council adopted by a unanimous vote Ordinance 2183 extending the interim ordinance imposing as an urgency measure a moratorium on the approval, commencement, establishment or operation of medical marijuana dispensaries.
- L. Pursuant to Government Code Section 65858, the interim ordinance shall expire on October 5, 2010, unless extended by the Town Council for an additional one year period.
- M. More time is needed for Town staff to study the issues surrounding medical marijuana dispensaries and to consult with the Chief of Police and Town Attorney.
- N. If the Town of Los Gatos does not extend the interim ordinance, then the potential exists

for the approval, commencement, establishment or operation of medical marijuana dispensaries within the Town, with the accompanying adverse impacts identified herein, without adequate regulations in place. There is a current and immediate threat to the public health, safety, or welfare, and the approval of a use permit, variance, building permit, business license, or any other permit or entitlement for use of property within the Town as a medical marijuana dispensary would result in that threat to the public health, safety, or welfare.

- O. The extension of the interim ordinance establishing a moratorium on medical marijuana dispensaries pursuant to Government Code Section 65858 is necessary to avoid the previously identified current and immediate threat to the public health, safety, or welfare.

SECTION III

EXTENSION OF INTERIM MORATORIUM

- A. For an additional period of one year, to and including October 4, 2011, no zoning ordinance interpretation or amendment, use permit, variance, building permit, business license, or any other permit or entitlement for use shall be approved or issued for the approval, commencement, establishment or operation of, and no person or entity shall own, manage, conduct, or operate any "medical marijuana dispensary," as that phrase is hereinafter defined, or participate as an employee, contractor, agent, volunteer, or in any other manner or capacity, in any medical marijuana dispensary, upon any property in any zoning district within the Town of Los Gatos during the period this urgency interim ordinance is in effect.
- B. For the purposes of this urgency interim ordinance, the phrase "medical marijuana dispensary" includes any site, facility, location, use, cooperative, center, or business that distributes, dispenses, stores, sells, exchanges, processes, delivers, gives away, or cultivates marijuana for medical purposes to qualified patients, healthcare providers, patients' primary caregivers or physicians, pursuant to Proposition 215, Senate Bill 420, or any California regulations adopted in furtherance thereof. As used herein, the term "marijuana" shall mean cannabis and all parts of that plant.

SECTION IV

PENALTIES

Violation of any provision of this interim ordinance shall constitute a misdemeanor punishable by a fine and/or imprisonment, as set forth in State law. Each and every day such a violation exists shall constitute a separate and distinct violation of this urgency interim ordinance. In addition to the foregoing, any violation of this interim ordinance shall constitute a public nuisance and shall be subject to abatement as provided by all applicable provisions of law.

SECTION V

EFFECTIVE DATE AND DURATION

Based on the findings set forth in Section 1 hereof, the recent inquiry and threat by a prospective operator to obtain a business license to open a medical marijuana dispensary in the Town of Los Gatos whether or not the Town permits such use, and the adverse impacts of dispensaries, a current and immediate threat to the public health, safety, or welfare exists. This interim ordinance is necessary to alleviate and address that threat until permanent zoning regulations can be established.

Therefore, this ordinance is adopted as an urgency interim ordinance pursuant to Government Code Section 65858 and shall take effect one day prior to one year from the expiration of Ordinance 2183 or October 4, 2010, and shall remain in full force and effect for a period of one year to October 5, 2011.

In extending this urgency moratorium, the Town Council has issued a written report pursuant to Government Code Section 65858, describing the measures that have been taken to study the relevant issues and to establish policies and regulations for medical marijuana dispensaries within the Town.

SECTION VI

ENVIRONMENTAL ANALYSIS

With respect to compliance with the California Environmental Quality Act ("CEQA"), the Town Council finds as follows:

- A. This interim ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. This interim ordinance does not, in itself, allow the operation of medical marijuana dispensaries; therefore there is no potential for resulting in physical change in the environment, directly or ultimately.
- B. This interim ordinance is categorically exempt from CEQA under Section 15308 of the State CEQA Guidelines. This interim ordinance is a regulatory action taken by the Town in accordance with Government Code Section 65858, to assure maintenance and protection of the environment pending the completion of contemplated zoning ordinance revisions.
- C. This interim ordinance is covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (A) and (B) of this paragraph, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment and, therefore, this interim ordinance is not subject to CEQA.

SECTION VII

SEVERABILITY

If any section, subsection, phrase, or clause of this interim ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this urgency interim ordinance. The Town Council hereby declares that it would have passed this urgency interim ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

SECTION VIII

PUBLICATION

This interim ordinance shall be published in accordance with the provisions of Government Code Section 36933.

SECTION IX

This interim Urgency Ordinance was introduced and adopted at a regular meeting of the Town Council of the Town of Los Gatos on September 7, 2010, by the following vote. This Urgency Ordinance takes effect October 4, 2010.

COUNCIL MEMBERS:

AYES: Joe Pirzynski, Steve Rice, Barbara Spector, Mike Wasserman, Mayor Diane McNutt

NAYS:

ABSENT:

ABSTAIN:

SIGNED:



MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

ATTEST:



CLERK ADMINISTRATOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA